

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS**

**Agenda # III.B.1.**

**Agenda Item Summary:** The Department requests that the Board initiate rulemaking to amend the air quality rules to revise the annual air quality operation fees and air quality open burning fees.

**List of Affected Rules:** This request to initiate rulemaking would amend ARM 17.8.501, 17.8.505, and 17.8.514.

**Affected Parties Summary:** The proposed amendments to the annual air quality operation fees would affect all of the approximately 623 facilities in existence as of January 1, 2006, that either hold an air quality permit or that will be required to obtain an air quality permit pursuant to Title V of the Federal Clean Air Act. The proposed amendments to the open burning fees would affect all of the 13 major open burners in the state: the Montana Department of Natural Resources and Conservation (DNRC); the United States Forest Service (USFS); the United States Fish & Wildlife Service (USF&WS); the Bureau of Indian Affairs (BIA); the Montana/Dakotas Bureau of Land Management (BLM); the National Park Service (NPS); Stimson Lumber Company; RY-Timber, Inc.; Plum Creek Timber Company; Pyramid Mountain Lumber, Inc.; F.H. Stoltze Land & Lumber Company; Sun Mountain Lumber; and Wyoming Sawmills, Inc.

**Scope of Proposed Proceeding:** The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments.

**Background:** Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Annual air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of fee carryover from the previous fiscal year. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

The Department is proposing that the Board establish an annual flat fee of \$600 for portable facilities rather than basing their fee on emissions of air pollutants. A flat fee is more appropriate for portable sources than a fee based on emissions of air pollutants, because emission levels are not a good measure of the amount of staff resources required to regulate portable sources. There are 327 portable facilities that are currently paying annual fees ranging from \$470 to \$3,765. Changing the

method of fee assessment for portable facilities to an annual flat fee of \$600 will keep the total fees collected for these sources the same.

This rulemaking would set the air quality operation fees to be billed in calendar year 2006. Air quality fees billed in 2006 will fund the department's activities in fiscal year 2007, and, for facilities other than portable facilities, would be based on emissions from calendar year 2005.

The legislative appropriation for fiscal year 2006 was \$2,902,420. The amount of the carryover from fiscal year 2005 was \$175,710. The total amount of pollutants reported for calendar year 2005 fees was 106,143 tons, and the per-ton component of the air quality operation fee was \$21.53.

The appropriation for fiscal year 2007 is \$2,996,826, an increase of \$94,406 from this fiscal year. The projected carryover from fiscal year 2006 is \$210,055. The total amount of pollutants reported for 2006 fees is 106,590 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge for facilities other than portable facilities to \$22.30. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$21.53 with \$22.30.

In calendar year 2005, the total amount of fees assessed was \$2,554,096. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,665,639, including \$196,200 for portable facilities and \$2,469,439 for non-portable facilities, for a total increase of \$111,543. In calendar year 2006, fees would be assessed for 623 facilities.

The Department is requesting that the Board amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2007. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2005, the major open burners reported 6,070 tons of emissions, compared to 9,029 tons for calendar year 2004, or a decrease of 2,959 tons.

The operating budget for 13 major open burners in fiscal year 2007 is \$42,954, compared to a budget of \$42,141 for fiscal year 2006. The \$813 budget increase is due to increases of \$180 for rule publishing costs with the Secretary of State, \$1,000 for communications, \$661 for salaries, \$198 for benefits, and \$206 for indirect costs. These increases are offset by a \$32 decrease in travel, a \$1,000 decrease in technical support funding, and carryover of \$400 resulting from an increase of the minimum fee in FY 2006. The Department is proposing that the Board increase the permit fees from \$10.87 per ton of particulate, \$2.72 per ton of oxides of nitrogen, and \$2.72 per ton of volatile organic compounds emitted to \$16.47, \$4.12 and \$4.12, respectively.

The cumulative amount of the fees would equal the budget of \$42,954. This amount would be distributed among the 13 major open burners.

The Department also is proposing that the Board institute an additional fee of \$1,000 for applicants intending to manage naturally-ignited wildland fire or wildland fire use (WFU) burning. Applicants would be required to submit the fee prior to permit issuance for the year in which WFU burning would occur.

**Hearing Information:** The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments.

**Board Options:** The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

**DEQ Recommendation:** The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice attached.

**Enclosure:**

1. Draft Notice of Public Hearing on Proposed Amendment.